

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JUAN JOHNSON,)	
)	
Plaintiff,)	
)	
vs.)	No. 05 C 1042
)	
REYNALDO GUEVARA, and the CITY)	Judge Grady
OF CHICAGO,)	Magistrate Judge Mason
)	
Defendants.)	

DEFENDANTS' MOTION *IN LIMINE* NO. 12

**DEFENDANTS' MOTION *IN LIMINE* TO BAR ANY ARGUMENT REGARDING
MISCONDUCT OF "OTHER UNKNOWN OFFICERS OR EMPLOYEES"**

Defendants City of Chicago and Reynaldo Guevara, by their attorneys, James G. Sotos and Elizabeth A. Ekl of James G. Sotos & Associates, Ltd., move this Honorable Court, *in limine*, to bar any argument regarding misconduct of "other unknown officers" at trial as Defendant Guevara cannot be made accountable for the actions of other unidentified individuals.

Plaintiff's Amended Complaint includes allegations against "other unknown police officers" or "other unknown employees" in alleging violations of Plaintiff's due process rights.¹ (See generally Dkt. 78, ¶¶ 7, 19-20, 23, 26-30.) However, Plaintiff to date has not advanced any claims against "unknown officers or employees." Indeed, the only individual defendant in the instant matter is Defendant Guevara, and there are no claims against any other defendant to be decided at this trial. Therefore, any evidence that "other unknown officers or employees" engaged in misconduct in relation to Plaintiff's arrest and conviction is irrelevant to Plaintiff's claims against Defendant Guevara. *See* Fed. R. Evid. 801, 802. Moreover, there is a substantial

¹ Plaintiff's *Monell* claim also includes references to "unknown" persons. However, the *Monell* claim was bifurcated (Dkt. # 105) and as such is not at issue in this motion.

risk of prejudice to Defendant Guevara if Plaintiff is allowed to attempt to saddle him with liability for the alleged acts of unknown persons and, as such, any reference or argument should be barred by Federal Rule of Evidence 403.

Not only is barring reference of wrongdoing by unknown and unidentified persons supported by the Federal Rules of Evidence, it is required by well-established case law. Given the danger of jury confusion regarding who is liable for any damage to Plaintiff, it is essential that Defendant Guevara be tried only on the basis of his own alleged wrongdoing. Indeed, liability under 42 U.S.C § 1983 is predicated upon personal responsibility. *Starzenski v. City of Elkhart*, 87 F.3d 872, 880 (7th Cir. 1996); *Schultz v. Baumgart*, 738 F.2d 231, 238 (7th Cir. 1984). The Seventh Circuit has firmly established that in order for liability to attach in a civil rights action, the plaintiff must prove that the defendant personally participated in or caused the constitutional deprivation. *Alejo v. Heller*, 328 F.3d 930, 936 (7th Cir. 2003); *Starzenski*, 87 F.3d at 879; *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983).

Here, the only individual defendant is Defendant Guevara, and, while he may be liable for any constitutional deprivation he caused Plaintiff, he cannot be responsible for those allegedly caused by others. The evidence in this case will show that Defendant Guevara was a gang crimes specialist at the time of the homicide investigation which led to Plaintiff's arrest and, as such, had a limited role in the investigation. He was not present at the scene, did not interview Plaintiff and did not have any supervisory responsibilities. If Plaintiff is allowed to argue to the jury, or elicit through testimony, allegations against others unknown persons, the jury may be prone to assign the liability for the actions of others onto Guevara. Therefore, in order to avoid

such an outcome, all references to any other misconduct, by any other persons associated with the Chicago Police Department, or the City of Chicago, must be barred.

Wherefore, Defendants respectfully request this Honorable Court grant this motion and bar any reference or argument by Plaintiff at trial to any wrongdoing by any unknown persons associated with the Chicago Police Department or the City of Chicago.

Dated: April 23, 2009

By: /s Elizabeth A. Ekl
ELIZABETH A. EKL, Attorney No. 06242840
One of the Attorneys for Defendants City of
Chicago and Reynaldo Guevara

JAMES G. SOTOS
ELIZABETH A. EKL
SARA M. CLIFFE
CHRISTINA S. WHITE
JAMES G. SOTOS & ASSOCIATES, LTD.
550 East Devon Avenue, Suite 150
Itasca, IL 60143-3156
(630) 735-3300
(630) 773-0980 (fax)

CERTIFICATE OF SERVICE

I hereby certify, under penalties of perjury pursuant to 28 U.S.C.A. § 1746, that on **April 23, 2009**, I electronically filed the Foregoing **Defendants' Motion *in Limine* to Bar Any Argument Regarding Misconduct of "Other Unknown Officers or Employees"** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record: See Attached Service List.

RESPECTFULLY SUBMITTED,

/s Elizabeth A. Ekl

ELIZABETH A. EKL

One of the Attorneys for Defendants City of
Chicago and Reynaldo Guevara

JAMES G. SOTOS
ELIZABETH A. EKL
SARA M. CLIFFE
CHRISTINA S. WHITE
JAMES G. SOTOS & ASSOCIATES, LTD.
550 East Devon Avenue, Suite 150
Itasca, IL 60143-3156
(630) 735-3300
(630) 773-0980 (fax)
Attorney No. 06242840
eeekl@jsotoslaw.com

SERVICE LIST

Johnson v. Guevara, et al., 05 C 1042

Counsel for Plaintiff Juan Johnson:

Jon I. Loevy
Arthur R. Loevy
Elizabeth N. Mazur
Russell R Ainsworth
LOEVY & LOEVY
312 North May Street
Suite 100
Chicago, Illinois 60607
(312) 243-5900
Email: jon@loevy.com
loevy@loevylaw.com
elizabethm@loevy.com
russell@loevy.com

Thomas G. Gardiner
GARDINER KOCH & WEISBERG
53 West Jackson Boulevard
Suite 950
Chicago, IL 60604
(312) 362-0000
Email: tgardiner@gkw-law.com

Counsel for Defendant Reynaldo Guevara:

Arlene Esther Martin
Geri Lynn Yanow
Joseph M. Polick
Kathryn M. Doi
CITY OF CHICAGO, DEPARTMENT OF
LAW
30 North LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 744-6949
Fax: 312.744.6566
Email: amartin@cityofchicago.org
gylanow@cityofchicago.org
jpolick@cityofchicago.org
kdoi@cityofchicago.org

Amanda C Antholt
SMITH, JOHNSON & ANTHOLT LLC
112 S. Sangamon Street, Suite 3F
3rd Floor
Chicago, IL 60607
(312) 432-0400
Email: amanda@lawsja.com

Daniel J. Stohr
222 North LaSalle Street
Suite 200
Chicago, IL 60601
(312) 726-1180
Email: djs7@sbcglobal.net

Counsel for City of Chicago:

Mara Stacy Georges
J Ernest Mincy, III
Diane S. Cohen
CITY OF CHICAGO, DEPARTMENT OF
LAW
30 North LaSalle Street
Suite 900
Chicago, IL 60602
(312) 744-9010
Email: mgeorges@cityofchicago.org
emincy@cityofchicago.org
dcohen@cityofchicago.org